

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

DEBRA PARRIS,

Plaintiff,

VS.

No. 2:13-cv-1410-JCM-VCF

SOCIAL SECURITY ADMINISTRATION,

REPORT & RECOMMENDATION

Defendant.

This matter involves *pro se* Plaintiff Debra Parris' challenge to the Social Security Administration's calculation of her supplemental security income benefits and her due process claim that the Administration allegedly deducted her benefits without notice and a hearing. (See Compl. #1-1); (Compl. #10); (Amend. Compl. #13¹). Before the court is the Administration's motion to dismiss (#22). Parris opposed (#24); and the Administrated replied (#25). For the reasons stated below, the Administrations motion should be granted.

BACKGROUND

Sometime before December 2012, Debra Parris lived in California. (Baker Decl. (#22-1) at ¶ 2) (citing April 17, 2013, Letter (#22-1) at 1). While residing in California, Parris received approximately \$769.00 in supplemental security income benefits. (Pl.’s Opp’n (#24) at 2:8). The amount of benefits that Parris received during this time was based on, *inter alia*, her status as a California resident. (April 17, 2013, Letter (#22-1) at 2).

¹ Parenthetical citations refer to the court's docket.

1 On or about December 2012, Parris moved to Las Vegas, Nevada. (*Id.*) Because of the move,
 2 Parris lost her status as a California resident and the amount of her social security benefits changed. The
 3 move specifically affected Parris' Medicaid benefit. Accordingly, on April 17, 2013, the Social Security
 4 Administration sent Parris a letter notifying her of the changes, and stating: "The Medicaid program for
 5 the State you now live in may differ from the State you lived in formerly. If you have any questions
 6 about eligibility for Medicaid or need medical assistance, you should get in touch with the Nevada State
 7 Welfare Division district office." (*Id.*) The letter also notified Parris that (1) the Administration may be
 8 in touch with Parris about previous payments and (2) she has a right to appeal the Administration's
 9 findings. (*Id.* at 2–3). Although not stated explicitly, this language meant that the Administration may
 10 withdraw monies from Parris' account in order to correct overpayments previously made.

11 On April 24, 2013, the Administration sent Parris a second letter. (April 24, 2013, Letter (#22-1)
 12 at 1). This letter notified Parris that the Administration determined that Parris became ineligible for any
 13 supplemental security income benefits on February 2012. (*Id.*) Again, the Administration explained that
 14 Parris could appeal the Administration's determination if she disagreed. (*Id.*) The letter also explained
 15 that if Parris appealed within ten days, her benefits would not change until the Administrated resolved
 16 her appeal. (*Id.*)

18 Parris did not appeal the Administration's determination until June 10, 2013. (Notice of Appeal
 19 (#22-1) Exhibit C at 1). This caused Parris considerable inconvenience. On August 2, 2013, Parris
 20 attempted to withdraw money from a Wells Fargo ATM to pay her rent and discovered that
 21 approximately \$314.00 was deducted from her checking account. (Pl.'s Opp'n (#24) at 1–2).
 22 Consequently, Parris filed suit on August 7, 2013.

23 Parris' administrative appeal of the Administration's determination that she is a Nevada resident
 24 and no longer entitled to supplemental security income benefits is still pending. (Def.'s Mot. to Dismiss
 25

1 (#22) at 4–5). The Administration estimates that Parris’s hearing will occur sometime in October 2014.
 2 (Id. at 5:1).

3 **LEGAL STANDARD**

4 The U.S. Constitution limits a federal district court’s subject-matter jurisdiction to actual cases or
 5 controversies. U.S. CONST. art. III, § 2. After the pleadings are closed—but early enough not to delay
 6 trial—a party may move to dismiss an action for lack of subject-matter jurisdiction. *See* FED. R. CIV. P.
 7 12(b)(1), (c). Subject-matter jurisdiction does not exist if the plaintiff’s action is moot or if the plaintiff
 8 lacks standing. *See DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 352 (2006).

9 The doctrines of standing and mootness are often thought of in terms of time: the requisite case
 10 or controversy that must exist at the commencement of the action for the plaintiff to have standing must
 11 continue throughout the lawsuit’s lifespan. *See Friends of the Earth, Inc. v. Laidlaw Envtl. Servs.*, Inc.,
 12 528 U.S. 167, 180 (2000). If, at any time, the action becomes moot or the plaintiff lacks standing, then
 13 the court lacks subject-matter jurisdiction and the action must be dismissed. *See* FED. R. CIV. P. 12(h)(3).

14 **DISCUSSION**

15 After reviewing the parties’ pleadings and papers, the court finds that Parris lacks standing and
 16 her action is now moot. On August 7, 2013, Parris commenced this action because the Administration
 17 had allegedly made a final decision to reduce Parris’ social security benefits without due process.
 18 (See Compl. #1-1); (Compl. #10); (Amend. Compl. #13); (*see also* Order (#14) at 2: 9–14). The record
 19 now reflects that Administration’s decision was not final and that the process Parris seeks will be given
 20 to her in October 2014. (Def.’s Mot. to Dismiss (#22) at 5:1). This means that Parris no longer has
 21 standing because the Commissioner has not entered a final decision, *see* 42 U.S.C. § 405(g), and that
 22 Parris’ action is moot because the Administration will give Parris the relief she requests here. Therefore,
 23 the court must dismiss because it lacks subject-matter jurisdiction. *See* FED. R. CIV. P. 12(h)(3).

1
2 ACCORDINGLY, and for good cause shown,

3 IT IS RECOMMENDED that the Administration's motion to dismiss (#22) be GRANTED.

4 IT IS SO RECOMMENDED.

5 **NOTICE**

6 Pursuant to Local Rules IB 3-1 and IB 3-2, a party may object to orders and reports and
7 recommendations issued by the magistrate judge. Objections must be in writing and filed with the Clerk
8 of the Court within fourteen days. LR IB 3-1, 3-2. The Supreme Court has held that the courts of appeal
9 may determine that an appeal has been waived due to the failure to file objections within the specified
10 time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit has also held that (1) failure to file
11 objections within the specified time and (2) failure to properly address and brief the objectionable issues
12 waives the right to appeal the District Court's order and/or appeal factual issues from the order of the
13 District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch.*
14 *Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

16 Pursuant to Local Special Rule 2-2, the Plaintiff must immediately file written notification with
17 the court of any change of address. The notification must include proof of service upon each opposing
18 party of the party's attorney. **Failure to comply with this Rule may result in dismissal of the action.**

19 See LSR 2-2 (emphasis added).

20 DATED this 27th day of June, 2014.

22 
23

24 CAM FERENBACH
25 UNITED STATES MAGISTRATE JUDGE